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TTAB

JOHN M. CONE
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June 23, 2005

VIA EXPRESS MAIL

Assistant Commissioner for Trademarks
BOX TTAB – NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Re: *The Wet Seal, Inc. v. FD Management, Inc.*; Opposition No. 91157022
Re U.S. Trademark Application No. 76/372,550 ARDENBEAUTY
Our Reference No.: 031458.0026

Dear Sirs:

Enclosed for filing in duplicate is Opposer's Response to FD Management, Inc.'s Motion to Strike Opposer's Notice of Reliance Under Rule 2.122(e).

Regards,



John M. Cone

Enclosures

cc: Joseph Dreitler



06-23-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application No. 76/372,550 ARDENBEAUTY.

THE WET SEAL, INC.,

Opposer,

v.

FD MANAGEMENT, INC.,

Applicant.

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Opposition No. 91,157022

**OPPOSER'S RESPONSE TO FD MANAGEMENT, INC.'S MOTION TO STRIKE
OPPOSER'S NOTICE OF RELIANCE UNDER RULE 2.122(e)**

Opposer, The Wet Seal, Inc., hereby submits its Response to FD Management, Inc.'s ("Applicant" or "FD") Motion to Strike Opposer's Notice of Reliance Under Rule 2.122(e) and would show the Trademark Trial and Appeal Board ("TTAB") as follows.

Applicant argues in its Motion to Strike that Opposer filed its Notice of Reliance outside of the testimony period set out by the TTAB. However, Applicant has conveniently failed to notice that the TTAB's Notice of case deadlines includes a period for the Opposer to file rebuttal testimony. The opposed Notice of Reliance was filed during that period. Under the rules, Opposer is entitled to submit evidence on which it intends to rely during both the 30 day testimony period and the 15 day rebuttal period. TTABMP §§ 403.01, 704.02.

1. The TTAB issued its first notice setting forth case deadlines on July 14, 2003, as follows: 1) Opposer's testimony period to close April 29, 2004; 2) Applicant's testimony period to close June 28, 2004; and 3) Opposer's rebuttal testimony period to close August 12, 2004.

2. The parties subsequently consented on several occasions to extend the testimony periods in this action in order to accommodate the substitution of counsel for FD Management, Inc. and scheduling conflicts relating to discovery/deposition testimony. The most recent Joint Consented Motion to Extend and Reset All Testimony Periods was filed on January 18, 2005. (*See* Exhibit A attached hereto.) The TTAB granted the Motion to Extend on January 18, 2005. (*See* Exhibit B attached hereto.)

3. The January 18, 2005 Motion to Extend set forth the following deadlines relating to the testimony period: 1) Opposer's 30 day testimony to close February 24, 2005; 2) Applicant's 30 day testimony period to close April 25, 2005; and 3) Opposer's rebuttal testimony period to close June 9, 2005. (*See* Exhibit A.)

4. Under 37 C.F.R. § 2.121(b)(1), the TTAB schedules testimony periods including "a testimony period for the [Opposer] to present evidence in rebuttal." Opposer filed its subject Notice of Reliance Under 37 C.F.R. § 2.122(e) on June 9, 2005, which fell within its rebuttal testimony period, and was therefore filed and served in a timely manner.

5. Applicant was aware of and agreed to the extension of the testimony periods as evidenced by Exhibit A attached hereto. Applicant, however, has failed to accurately recall that Opposer is entitled to a rebuttal testimony period and to introduce evidence on which it intends to rely during both its 30 day testimony period and its rebuttal testimony period.

For the reasons stated above, Opposer respectfully requests that Applicant's Motion to Strike be denied.

Dated: June 23, 2005.

Respectfully submitted,



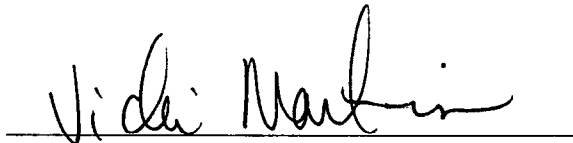
John M. Cone
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Facsimile: (214) 969-4343

ATTORNEYS FOR OPPOSER
THE WET SEAL, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June 2005, a copy of the foregoing document was served upon the following counsel for Applicant via U.S. mail:

Joseph R. Dreitler
Jones Day
P.O. Box 165017
Columbus, Ohio 43216-5017



#5752272

Certificate of Mailing Under 37 C.F.R. § 1.8

Date of Deposit: 6-23-05

I hereby certify that the papers enclosed herein are being deposited with the United States Postal Service on the date indicated above in an envelope and addressed to: Assistant Commissioner for Trademarks, Box TTAB – No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513.

Vicki Martin
(Typed or printed name of person mailing paper or fee)

Vicki Martin
(Signature of person mailing paper or fee)

Martin, Vicki

From: Cone, John
Sent: Tuesday, January 18, 2005 3:47 PM
To: Martin, Vicki; Pierce, Cara
Subject: FW: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA23697

John M. Cone
Akin Gump Strauss Hauer & Feld LLP
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Dallas Texas 75201
214 969 4214 (tel)
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jcone@akingump.com

-----Original Message-----

From: estta-server@uspto.gov [mailto:estta-server@uspto.gov]
Sent: Tuesday, January 18, 2005 3:35 PM
To: jrdreitler@jonesday.com; Cone, John
Subject: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA23697

Stipulated/Consent Motion.

Tracking No: ESTTA23697

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Stipulated/Consent Motion. submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call (703) 308-9300 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your request for an extension of time to file an opposition in due course.

Printable version of your request is attached to this e-mail



ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA23697
Filing date: 01/18/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding : 91157022
Applicant : FD Management, Inc. FD Management, Inc.
300 Delaware Avenue
Wilmington, DE 19801

Other Party: Plaintiff
The Wet Seal, Inc.

Motion for an Extension of Discovery or Trial Periods With Consent

The Close of Plaintiff's Trial Period is currently set to close on 01/25/2005. FD Management, Inc. requests that such date be extended for 30 days, or until 02/24/2005, and that all subsequent dates be reset accordingly. The grounds for this request are as follows:

Parties are unable to complete discovery/testimony during assigned period

FD Management, Inc. has secured the express consent of all parties to this proceeding for the extension requested herein. FD Management, Inc. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by First Class Mail on this date.

Respectfully submitted,
/joseph r dreitler/
Joseph R. Dreitler
jrdreitler@jonesday.com
jcone@akingump.com
01/18/2005

Martin, Vicki

From: Cone, John
Sent: Tuesday, January 18, 2005 5:20 PM
To: Martin, Vicki
Subject: FW: MOTION TO EXTEND GRANTED

John M. Cone
Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue
Suite 4100
Dallas Texas 75201
214 969 4214 (tel)
214 969 4343 (fax)
jccone@akingump.com

-----Original Message-----

From: ESTTA@USPTO.GOV [mailto:ESTTA@USPTO.GOV]
Sent: Tuesday, January 18, 2005 5:00 PM
To: jrdreitler@jonesday.com; Cone, John
Subject: MOTION TO EXTEND GRANTED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Jan 18, 2005

PROCEEDING NO. 91157022

The Wet Seal, Inc.

v.

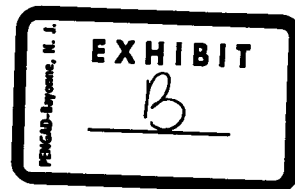
FD Management, Inc.

MOTION TO EXTEND GRANTED

FD Management, Inc.'s consent motion filed, Jan 18, 2005, to extend the discovery period until Feb 24, 2005, is granted. Accordingly, discovery and trial periods are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:	Closed
Thirty-day testimony period for party in position of plaintiff to close:	Feb 24, 2005
Thirty-day testimony period for party in position of defendant to close:	Apr 25, 2005
Fifteen-day rebuttal testimony period to close:	Jun 09, 2005

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after



completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

and Appeal Board

By the Trademark Trial